IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.6044 OF 2005
WITH
CIVIL APPLICATION NO.594 OF 2006

Mumbai-Pune Taxi Tourist Service Centre. ...Petitioner.
Vs.
The Pune Taximens Consumer Co-operative
Society Ltd. & Ors. ...Respondents.

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Mr. Y. R. Shah for the Petitioner.
Mr. P.B. Shaligram for Respondent No.1.
Mr. R.M. Pethe i/b. Mr. R.G. Ketkar for Respondent Nos.2 & 3.
Mr. N.P. Deshpande, AGP for Respondent Nos.4 to 7.
Dr. V.K. Chaudhari for the Applicants.

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CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

March 28, 2006.

JUDGMENT (Per Dr. D.Y. Chandrachud, J.):

These proceedings before the Court have been instituted by the Mumbai-Pune Taxi Tourist Service Centre, a Trade Union registered under the Trade Unions Act, 1926, in order to impugn a direction issued by the Deputy Commissioner of Police (Traffic) at Pune on 30th August 2005.

2. According to the Petitioner, a dispute had arisen

between taxi drivers registered in Mumbai and their counterparts registered at Pune over the operation of taxi services between the two cities. Eventually, this culminated in a meeting of 6th September 1974 in the Chambers of the then Minister of State for Home in the State Government and an arrangement thereupon was put into place. Under the arrangement, the existing Taxi Stand near the Pune Railway Station was to be allotted to the First Respondent and a new Taxi Stand near the S.T. Stand at Sanjay Gandhi Marg was to be allotted to the Petitioner. It would appear from the proceedings that there have been disputes between the parties in relation to the Taxi Stand at Mumbai which resulted in an order dated 28th September 2004 of a Division Bench of this Court. In so far as the dispute at Pune is concerned, meetings were held under the aegis of the office of the Deputy Commissioner of Police (Traffic), Pune in which the Deputy R. T. O., Pune, a Traffic Planner of the Pune Municipal Corporation and the rival Unions of Taximen participated. An effort was made after hearing the views of the Unions and the regulatory authorities to resolve the problem of traffic congestion outside the Pune Railway Station. On 30th August 2005, the Petitioner was informed that a decision has been arrived at to permit and allow a common Taxi Stand for ten taxis.

The decision which has been taken at the meeting held on 28th July 2005 postulates that ten taxis would be allowed to be present at any given point of time on Sanjay Gandhi Road in the vicinity of Pune Railway Station comprising of taxis alternately belonging to the Mumbai-Pune Taxi operators (represented by the Petitioner) and the Pune-Mumbai Taxi operators (represented by the First Respondent). That forms the subject matter of these proceedings.

3. To the affidavit in reply filed on behalf of the Traffic Branch of the Police for the City of Pune, a notification dated 27th September 1996 issued by the Home Department of the State Government has been annexed by which the Deputy Commissioner of Police (Traffic) has, inter alia, been authorised to exercise powers of the State Government under Section 117 of the Motor Vehicles Act, 1988. The Learned AGP submitted that the Deputy Commissioner of Police (Traffic) was authorised to take the impugned decision. On behalf of the Petitioner, it has been submitted that the Deputy Commissioner of Police (Traffic) had no authority to take the impugned decision and that under Rule 110 of the Maharashtra Motor Vehicles Rules, 1989, it is for the Regional Transport Authority with the permission of the District Magistrate to

notify stands or halting places in places outside Greater Mumbai.

4. The principal submission that has been urged on behalf of the Petitioner is that the power to prescribe specified stands or halting places for taking upon or setting down of passengers of public service vehicles is vested by Rule 110 of the Maharashtra Motor Vehicles Rules, 1989 in the Regional Transport Authority. Hence, it was submitted that the Deputy Commissioner of Police has acted ultra vires the scope of his powers and has exercised a power which was not conferred upon him. In response to the submission, it has been urged on behalf of the State that the State Government has the power to prescribe parking places and halting stations under Section 117 of the Motor Vehicles Act, 1988 and that the Deputy Commissioner of Police has been delegated the power under Section 117 by a notification dated 27th September, 1996.

5. In order to appreciate the controversy, it would be necessary to advert to the provisions of Section 117 of the Motor Vehicles Act, 1988 which is as follows :

> "117. Parking places and halting stations – The State Government or any authority authorised in this behalf by the State Government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers."

Section 117 is a part of Chapter VIII of the Motor Vehicles Act, 1988 which is entitled "Control of traffic". Section 117 of the Act of 1988 corresponds to the provisions of Section 76 of the Motor Vehicles Act of 1939. Section 68 of the earlier Act of 1939 conferred power upon the State Government to frame rules for the purposes of Chapter IV which dealt with the control of transport vehicles. Clause (r) of sub section(2) of Section 68 of the 1939 Act specifically conferred upon the State Government the power to frame rules regarding or prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places.

6. The provisions of Section 68(2)(r) and of Section 76 of the Motor Vehicles Act, 1939 came up for construction before the

Supreme Court in several cases, the first amongst them being **T.B. Ibrahim v. The Regional Transport Authority, Tanjore** (AIR 1953 SC 79). The Supreme Court held that the expression 'duly notified stands' in Section 68(2)(r) meant a stand duly notified by the Transport Authority and not a stand notified by the municipality in whose jurisdiction the area was situated. The Supreme Court held that the fixing or the alteration of a bus stand was not a purpose foreign to the control of transport vehicles under Chapter IV of the Act and therefore, rules could be framed by the State Government. The view of the High Court in that case to the effect that Section 76 which contained provisions relating to parking places and halting places had no application to the designation of a bus stand was confirmed. The Judgment in Ibrahim's case was followed by a Constitution Bench of the Supreme Court in **Municipal Board, Pushkar v. State Transport Authority, Rajasthan** (AIR 1965 SC 458). Summing up the law laid down in Ibrahim's case, the Supreme Court held thus :

> "It appears clear to us however that Ibrahim's case is also an authority for the proposition that an order fixing or altering a bus stand cannot be made under S. 76."

Having thus construed the judgment in Ibrahim's case, the Supreme Court held that even if this binding authority had not been present, the same view was liable to be taken :

> "In our opinion, Chapter VI which deals with the question of "Control of traffic" in general has nothing to do with the fixation or alteration of bus stands. Section 76 has no doubt used the words "places at which motor vehicles may stand" and the learned Attorney- General tried to persuade us that this includes the fixation of what is known as bus stand. While the word "bus stand" has not been defined in the Act, we have no hesitation in accepting the contention of the respondents that a bus stand means a place where bus Services commence or terminate. It is the place where the buses stand for commencing its transport service or where they stand after terminating their service, that is popularly known as a bus-stand. We do not think the words "places at which the motor vehicles may stand either indefinitely or for a specified period of time" can be reasonably interpreted to include a bus stand in the above sense. When it is remembered that Chapter VI in which S. 76 occurs, is intended to deal with the control of traffic it becomes clear that the determination of places at which the Motor vehicles may stand either indefinitely or for a specified period of time means the "determination of parking places" while the determination of places at which public vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers means "halting stations for public service vehicles." It is well worth noticing that while the determination of such places for stoppage, in the latter portion of the section can be in respect of public service vehicles only the determination of places of standing in the first part of the section is in respect of motor vehicles in general.
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> (19) All things considered, it appears to us clear that S.

76 has nothing to do with the provision for bus stands."

Rule 134 of the Rajasthan Motor Vehicles Rules, 1941 empowered the Regional Transport Authority to fix or alter bus stands and the Supreme Court held that this being a rule framed in accordance with the rule making authority under Section 68, that rule would govern. The same view was reiterated in **Municipal Council, Bhopal v. Sindhi Sahiti Multipurpose Transport Co-op. Society Ltd.** (AIR 1973 SC 2420) by a Bench of two Learned Judges of the Supreme Court. Finally, it would be necessary to advert to the decision in **Hari Om Gautam v. District Magistrate, Mathura** (AIR 1987 SC 1339). Mr. Justice E.S. Venkataramiah adverted to the earlier decisions of the Supreme Court and held that Section 76 which is confined to the question of determination of parking places and halting places is not the same as prescribing any bus stand which can only be notified by the Regional Transport Authority as held in Ibrahim's case. The Regional Transport Authority had not passed any order to determine the area in question as a bus stand and it was held that the District Magistrate could not be equated with the Regional Transport Authority constituted under the Act. The High Court was, therefore, held to have been in error in

upholding the order passed by the District Magistrate.

7. These binding principles of law which emerge from the judgments of the Supreme Court would have to govern this case. We may note that Section 138 of the Motor Vehicles Act, 1988 empowers the State Government to make rules for the purpose of Chapter VIII which deals with the control of traffic and Section 117 is also a part of the same Chapter. In exercise of the rule making power, the State Government has framed Rule 110 of the Maharashtra Motor Vehicles Rules, 1989 which, in so far as is material, provides as follows ;

> "**110. Stands or halting places** – (1) With the approval in the Greater Bombay, of the Commissioner of Police, and elsewhere of the District Magistrate the Regional Transport Authority, by notification in the *Official Gazette* and by the erection of traffic signs which are permitted for the purpose under clause (a) of sub section (1) of Section 116, and may, in respect of the taking upon, setting down of passengers of the public service vehicles or any specified class of public service vehicle -
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> (i) conditionally or unconditionally prohibit the use of any specified place or of any place of a specified nature or a specified class of vehicle;
>
> (ii) require that certain specified stands or halting places only shall be so used within the limits of any Municipal Corporation, Municipality, notified area of

> cantonment or within such other limits as may be specified in the notification :
>
> Provided that, no place which is privately owned shall be so notified except with the previous consent in writing of the owner thereof."

By and as a result of Rule 110, for places within and outside Greater Bombay the Regional Transport Authority has been conferred with the power in connection with the taking upon or setting down of passengers of public service vehicles, to require that certain specified stands or halting places only shall be so used within the limits of the Municipal Corporation. The power has to be exercised outside Greater Bombay with the approval of the District Magistrate. The Deputy Commissioner of Police may have been delegated the powers of the State Government under Section 117 of the Motor Vehicles Act, 1988. However, in view of the law laid down by the Supreme Court it will have to be held that the power to prescribe specified stands or halting places for taking or setting down of passengers of public service vehicles is not a power which is traceable to Section 117, but one which by the exercise of the rule making power has been vested by Rule 110 in the Regional Transport Authority. Hence, it is for the Regional

Transport Authority to determine as to whether a stand or halting place should be specified for the purposes of Rule 110.

8. For these reasons we are of the view that the decision which has been taken by the Deputy Commissioner of Police is ultra vires the scope of his powers and cannot be enforced as such without an authoritative decision by the Regional Transport Authority to that effect. There is undoubtedly a problem of traffic congestion in and around the periphery of the Pune railway station and it is only to be expected that the Regional Transport Authority shall apply its mind to the pressing need to resolve this problem. Conflicting unions of taxi men cannot allow their internal disputes to affect the welfare of the citizens and of the passengers who use the railway station and its surroundings. However, since a statutory provision has conferred power to do so on a specific authority viz. the Regional Transport Authority, we direct that it would be for the Regional Transport Authority to consider the proposal which has been formulated by the Deputy Commissioner of Police and to take an appropriate decision in that regard. We, therefore, direct that the impugned decision shall be treated as more than a proposal for the consideration of the Regional Transport Authority. The Regional Transport Authority shall arrive at a final decision within a

period of three months from today after giving an opportunity of being heard to the representative interests involved in the case. The Petition shall accordingly stand disposed of in these terms. There shall be no order as to costs. Until a decision is arrived at by the R.T.A., the status quo as of date shall prevail as an interim arrangement.

9. In view of the disposal of the petition, the Civil Application does not survive and is accordingly disposed of.

CHIEF JUSTICE.

(DR. D.Y. CHANDRACHUD, J.)